

Social Media and Libel Law

An Honors Thesis (Honors 499)

By

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A handwritten signature in black ink, reading "Mary Spillman". The signature is written in a cursive style with a large, sweeping "M" and a long, horizontal flourish at the end.

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Abstract

Thanks to broadband capabilities and rapid improvements in technology, the Internet is now available to billions of people across the globe, and social media sites – like Facebook and Twitter, as well as blogs – have garnered hundreds of millions of users. With the exponentially increasing importance of social media in everyday activities, as well as major world events, the legal aspects of these mediums are also becoming significant. The topic of libel law and its place within the realm of social media is emerging as one of the main areas of concern, as lawsuits for defamatory statements made on these sites are becoming more common. Through research in media and law and with the help of three expert sources, predictions about the path social media and libel will follow have been set forth: law will need to adapt and citizens will need to take more responsibility for their posts.

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Introduction

Social media has essentially exploded on the Web within the past decade. With progression from Friendster to Twitter, communication and the dissemination and retrieval of information have been revolutionized. First utilized more on an individual level, social media has now become a major tool for businesses and news organizations, with everyone from The New York Times to Starbucks Coffee tweeting at their target audiences. It has even played an important part in local, national and world events.

The recent Egyptian revolution highlighted the essential role social media is already playing in history. People posted on social media sites about the protests taking place in Egypt in February 2011 and the actions of the government and law enforcement (Crovitz 2011). Videos were uploaded to YouTube of police officers dividing marijuana they had confiscated, photos were posted to Facebook of people being beaten by police and, people even used social media to organize protests. Photos of one protestor's body, Khaled Said, who was killed by police, were taken on a cell phone and uploaded to a Facebook group entitled "We Are All Khaled Said," which acquired 500,000 members. The images in these photos, taken in the morgue, undermined the government's explanations of Said's death, revealing the deceit going on within the country. Social media also became alternative news sources for Egyptians and the world, as Egyptian traditional media is mostly government-controlled. When the government caught wind of what was happening on the Web, it cut off its people's access to the Internet and went after the lead organizers, like

Wael Ghonim, a student at American University in Cairo. When released, Ghonim declared: "This is an Internet revolution. I'll call it Revolution 2.0" (Crovitz 2011).

But as they say, with great power comes great responsibility. Despite its utility and ever wide-spreading use, social media and its users are still held accountable for their postings and are subject to the law, at least in the United States. With issues ranging from intellectual property infringement to false advertising (Alexander and Sater 2011), legal issues involving social media have slowly been cropping up. With the ease of self expression facilitated by social media, one issue in particular that has come to light is the treatment of potentially defamatory and libelous statements online.

This paper will attempt to analyze the intersection of social media and libel and where this area of law is headed. We will first look at the history of social media and its ever-growing reach. Then, after introducing libel law and its stipulations, we will look at recent cases involving social media and libel, factoring in other legal precedent and hypothesis, thereby constructing a view of social media and libel in the future.

What is Social Media?

The term "social media" is difficult to define. Internet guru Brad King¹ says that social media itself is not a "thing" to be defined. "It's an evolution of 80 years of development," King says. When people talk about social media, they are often

¹ Brad King is an assistant professor of journalism at Ball State University and an Emerging Media Initiative Fellow at the Center for Media Design. He teaches classes on social media and developed the online news operation at the Massachusetts Institute of Technology's Technology Review. He has been working with social media professionally for almost 15 years.

referring to sites such as Facebook and Twitter; but the idea of social media goes far beyond that, according to King. Social media, essentially, is anything that allows people to search, retrieve or publish content. Internet tools have been allowing us to perform these functions for years. King explains the breadth of the definition: "What people call social media is just a sub-set of the software environment we live in. Hence, search engines equal social media because they enable people to easily find each other, as well as information." Now that the scale of such tools and the number of people using them has ballooned, the power of what people deem "social media" has become highly visible (King 2011).

According to Haenlein and Kaplan (2010), in order to formulate any sort of definition for social media, one must first look at two interlaced concepts: Web 2.0 and the idea of "user generated content." Web 2.0 refers to a form of Internet activity, termed in 2004, which allows multiple users to edit content online, not just the original creators (Haenlein and Kaplan 2010). As with Wikipedia, blogs and mediums of the like, some sites give users the ability to either alter content or add new content of their own. "User generated content" refers to the actual utilization of the Web 2.0 functionality. The term "is usually applied to describe the various forms of media content that are publicly available and created by end-users" (Haenlein and Kaplan 2010). Explicitly, Haenlein and Kaplan define social media as "a group of Internet-based applications that build on the ideological and technical foundations of Web 2.0 and that allow the creation and exchange of User Generated Content."

While social media can include a vast array of Internet tools, including sites as encompassing as Google (King, 2011), social media as we typically discuss it

today refers to social networking sites. Social networking sites, defined by Boyd and Ellison (2007), are websites that possess three essential qualities: “(1) construct a public or semi-public profile within a bounded system, (2) articulate a list of other users with whom they share a connection, and (3) view and traverse their list of connections and those made by others within the system.” The profile one constructs on Facebook, for example, qualifies this platform as a social networking site, allowing users to create their own web of contacts made up of other users of the site. Social networking sites vary in purpose and organization, aside from the basic profile function, according to Boyd and Ellison. They can include sites that focus on social connections, preexisting or not, such as Facebook; sites that link users through shared political views or interests, such as blogs; or sites that offer extensive photo or video sharing capabilities, such as YouTube or Flickr.

This vein of social media, with a concentration on social networking, (the definition of which will be utilized throughout this paper) has a rather young history, as displayed in Kindelan’s (2011) outline. After the advent of email in 1971 and its growth throughout the 1980s, one of the first sites to qualify as a social networking site was theglobe.com, which allowed users to begin to customize their Internet experience, giving them the ability to post their own content and communicate with other users who had similar interests. Direct, immediate Internet messaging next entered the scene in 1997, with the launch of AOL’s Instant Messenger application (Kindelan 2011). In that same year, what Boyd and Ellison deem the “first recognizable social network site” was created: sixdegrees.com. The site allowed users to create profiles and keep a visible list of their “friends,”

becoming the first site to combine these two functions (Boyd and Ellison 2007). Several years later, after the “dot-com boom” and stock market crash in 2000, Friendster launched in 2002 (Kindelan 2011). This site allowed users to meet friends-of-friends in a dating service, based on the idea that connecting people who already had mutual friends would result in better relationships than connecting with strangers, as facilitated by sites like match.com (Boyd and Ellison 2007).

A year later, the era of social networking as we know it began. MySpace, originally intended to be a copy of the Friendster concept (Kindelan 2011), was launched in 2003, allowing users, for the first time, to determine whether or not they wanted their profile to be “public” or visible only to people they chose to be “friends” with (Boyd and Ellison 2007). In 2004, the giant of all social networking sites was born. Mark Zuckerberg created Facebook, initially as a means of connecting college students, specifically those at his alma mater, Harvard University (Carlson 2010). Then, in 2006, Evan Williams, Biz Stone and Jack Dorsey created Twitter as a way to send out short messages, specifically 140 characters or less, to others (Stone 2010). However, Biz Stone expressed in a discussion with students at Ball State University² that, because the evolution of Twitter has expanded to become a method of news gathering and dissemination as well as a marketing tool, it is no longer merely a social networking site (2010). Today, the number of social networking sites has mushroomed, with additions being made constantly for almost every niche possible. For example, one of the newest sites being publicized, Reel

² Biz Stone participated in several discussions and presentations with students at Ball State University in Muncie, Indiana, on September 17, 2010, during which he expressed many views on the founding, evolution and use of Twitter and social media.

Playmakers, provides a place for high school athletes to connect and display their talents, allowing for more attention from recruiters (Tran 2011).

Another major form of social media, which in some forms could be argued as social networking, is the blog. The term “blog” is short for “weblog,” which, according to Drezner and Farrell (2004), is a “web page with minimal to no external editing, providing on-line commentary, periodically updated and presented in reverse chronological order, with hyperlinks to other online sources...[which] can function as personal diaries, technical advice columns, sports chat, celebrity gossip, political commentary, or all of the above.” Emerging in the late 1990s, blogs only numbered near 50 in 1999 (Drezner and Farrell 2004). Today, the numbers are well into the double-digit millions. The ease and lack of barriers for creating a blog is one of the major reasons for their exponential growth. Sites like Blogger.com allow anyone and everyone to create their own personal blog in as little as 10 minutes. Traditional news organizations, journals and corporations have even taken to blogging as an alternative form of storytelling (Drezner and Farrell 2011).

Reach of Social Media

The numerous social networking sites that have infiltrated the Web and the number of people using them have made these tools incredibly powerful and far-reaching. With one post on any given social media site, hundreds, thousands or millions of people can receive the information immediately. Stone expresses the speed and scope of social media, Twitter in particular: “Twitter has the incredible

ability to take one small piece of information and, through re-tweets³ and viral spread, that information can go from one person trapped in a cave to millions of people around the world in three seconds” (Stone 2010).

The sheer number of people logged into these sites is staggering. Facebook now boasts more than 500 million “active users” (Facebook Press Room 2011). If it were a country, this would make Facebook the third largest, after China and India (Qualman 2009). Twitter has a much smaller following, but still significant, with approximately 160 million registered accounts, according to Stone (2010). And it doesn’t stop there. LiveJournal, a blog and social networking “community” dedicated to self-expression, has more than 2 million users (LiveJournal 2011); Flickr, a photo-sharing blog site, has more than 36 million users (Baker 2009); LinkedIn, a social networking site dedicated to making and maintaining professional career connections, has more than 100 million users (LinkedIn 2011); MySpace, one of the first major social networking sites, has more than 100 million users (MySpace 2011); WordPress, a blog-hosting site, provides blog space for more than 19 million bloggers, while 295 million people read these blogs every month, and an average of 500,000 new posts and 400,000 comments on posts are made each day (WordPress 2011); YouTube, the top video sharing site, acquires more than 2 billion views a day, with more than 5 million registered users subscribing to “channels” and more than 4 million people connecting to other social networks through YouTube auto-sharing functions (YouTube 2011).

³ A way to re-post information on Twitter, spreading it to more users.

Compare these numbers to the total projected newspaper circulation rate in the United States of slightly less than 56 million (Press Reference 2011) – down about 6 million from 2000 – and one can see that the presence on social media sites is astounding. The extensive use of social media could be attributed to the growing availability of the Internet to people around the world. According to the International Telecommunications Union (ITU), more than 2 billion people worldwide have some access to the Internet, double the number five years ago. In addition, more than 5.3 billion people have access to mobile networks, and 143 countries provide 3G services (Chellam 2011). The ITU reports that the number of people with access in their homes went from 1.4 billion to 1.6 billion in one year, from 2009 to 2010, an increase of 226 million users (Chellam 2011). That constituted roughly 600,000 new Internet users a day. Approximately 162 million of those new users were connecting from third-world countries. The ITU notes that the advent of broadband Internet can be held responsible for the increases and calls it a “catalyst for growth,” according to an article in The Business Times Singapore. (Chellam 2011).

Broadband Internet – typically in the form of digital subscriber loops (DSL), cable modems, fiber optic cables, Wireless Local Area Networks (WLANs) or Wireless Fidelity (Wi-Fi) – combines a larger connection capacity and faster speed to create a network that is 5 to 2,000 times faster than dial-up Internet (ITU 2003). According to the ITU, broadband offers three major benefits: (1) Broadband allows for “faster and more convenient access to information” and makes it easier to conduct online transactions. It improves existing Internet services and facilitates

new applications. (2) Broadband can cause economic gains, such as using only one phone line with DSL, when multiple lines were previously necessary if one wanted to use the telephone while surfing the Web. (3) Broadband provides opportunities for new solutions that were too expensive or inefficient to consider with dial-up Internet. New services include online government, health care, education and commerce services. The ITU also notes that, "Broadband changes user habits, for instance, by encouraging 'always on' use and positioning the home computer as a multimedia entertainment device...In addition broadband opens the path to the development of interactive applications, virtual reality and other high-quality, bandwidth-hungry digital services" (ITU 2003).

In the United States, the Federal Communications Commission has made it its mission to bring broadband Internet to as many households as possible, making the Internet the dominant mode of communication in the nation (Wyatt 2011). The FCC's National Broadband Plan, in conjunction with the National Telecommunications and Information Administration of the Department of Commerce, has put more than \$38 million toward spreading broadband across the nation (FCC 2010).

What is Libel?

In its most basic sense, libel is defined as a "written defamation," defamation being an intentional, false communication about a person that causes injury to his or her reputation (Belmas and Overbeck 2011). In order for any statement to fall under libel, four criteria must be met: (1) The message must qualify as defamation,

meaning it causes harm to someone's reputation; (2) The victim being libeled must be identified by name or in a way that is understood by someone other than the victim and creator of the message; (3) The message must be published, communicated or in some way disseminated to a person other than the victim and the creator; (4) The creator must have communicated the message with actual malice or negligence; (5) Often, damages – tangible or intangible losses that may be compensated for monetarily – must be claimed by the victim (Belmas and Overbeck 2011). Neither the form of the libel nor the place it is displayed is of any importance if these criteria are met. If the defamatory statements are spoken instead of written, they are classified as "slander" (Belmas and Overbeck 2011).

Whether or not a statement is defamatory varies on a case-by-case basis, but courts have identified two general types of libel to narrow the scope: libel *per se* and libel *per quod*. Libel *per se* refers to a direct form of libel in which the actual terms used create the defamation, like calling someone a racist or an extortionist, for example. Libel *per quod*, on the other hand, refers to a less obvious form of libel in which additional facts must be known in order for the defamation to be understood. Today, the distinction between the two is of less importance, but both forms still fall under libel law (Belmas and Overbeck 2011).

Because libel cases are considered "private disputes between two parties," they are typically state cases, with few making it to the Supreme Court. However, most states adhere to the same basic principles in their libel statutes and court decisions (Belmas and Overbeck 2011). Courts have established legal precedent

through cases dealing with libel issues, such as the treatment of a public figure compared to a private citizen.

Writing the opinion of the court in the landmark 1964 case of *New York Times v. Sullivan*, Justice William Brennan said that public figures, more specifically public officials, voluntarily insert themselves into the public sphere when they run for office and, therefore, should be subject to a higher level of scrutiny than private persons (Belmas and Overbeck 2011). In this case, the Supreme Court set forth the standard of “actual malice.” The Court ruled that in order for public figures to win damages for libel, they must prove that the falsehood was published with actual malice, which the Court defined as “knowledge that the defamatory statement was false or made with reckless disregard of whether it was false or not” (*New York Times v. Sullivan* 1964).

This standard was upheld and built upon 10 years later in *Gertz v. Welch*. An even broader idea of a public figure emerged from this case, defined as someone who, “by reason of the notoriety of their achievements or the vigor and success with which they seek the public’s attention, are properly classed as public figures.”⁴ More importantly, the Supreme Court lowered the threshold for private citizens suing for libel. In his concurring opinion, Justice Harry Blackmun stated that, “the Court now conditions a libel action by a private person upon a showing of negligence, as contrasted with a showing of willful or reckless disregard” (*Gertz v. Welch* 1974). Private persons need only prove that the defamatory statements were published with negligence, not actual malice.

⁴ Quoted from Headnote 11, LAW §927.5 “free speech and press – protection of public persons,” of Lawyer’s Edition Headnotes in *Gertz v. Welch*, 1974

Social Media and Libel Intersect

With the power that social media has garnered in recent years, the way people use these tools is bound to produce both positive and negative effects. As with any tool, it can be used for good or for evil. With the speed that useful information can be pushed into the world, the same speed applies to non-useful or entirely bad or false information (Stone 2010). We have seen this in the form of defamatory remarks posted online, resulting in libel cases. While case law on libel within social media has been very limited, there have been many questions raised about taking legal action for comments posted on social media sites.

The earliest of these questions was whether social media sites had responsibility for comments posted. In *Stratton Oakmont, Inc. and Daniel Porush v. Prodigy Service Co.* (1995), the sites, called Internet Service Providers (ISPs), were determined to be legally responsible for user content. In *Stratton v. Prodigy Service Co.*, the plaintiffs filed suit against Prodigy Services, which was a partnership between IBM Corporation and Sears-Roebuck & Company, for defamatory statements posted on the ISP's bulletin board. The plaintiff sought partial summary judgment to determine whether or not the service provider was considered a publisher and had exercised editorial control over the bulletin board. The court ruled in favor of the plaintiff, stating that the ISP was, in fact, a publisher. In 1996 this stipulation was superseded by the Communications Decency Act. This act provides immunity to social networking sites and blogs from liability for information published by third parties (Degner and Tune 2009). However, these

sites must not alter any information published by users to maintain this immunity. Basically, ISPs cannot be sued for the content that their users provide if they do not exercise any editorial control over the content.

Since the adoption of this act, the question has seemed to shift to individuals and the extent of their rights to free speech. One of the buzzwords when it comes to social media is “self-expression.” Many blog and social networking sites encourage users to express themselves through their profiles and the content they post. But when does self-expression and freedom of speech become a problem? Typically, when it begins to involve comments about others. Cases against individuals for defamatory remarks on social media sites have begun to emerge, highlighting several specific issues.

The first of these issues is that of bloggers’ First Amendment rights. Unlike earlier arguments, bloggers do not have an unlimited right to speech and can be charged with libel for their posts (Parker 2006). David Milum was the first blogger to prove this. After disagreements about how to defend himself on a drunk-driving charge, Milum fired his lawyer, Rafe Banks. Milum demanded that Banks refund the \$3,000 fee he charged; but Banks refused. In 2004, Banks discovered that Milum had started a blog and was making defamatory remarks about the lawyer on it, accusing Banks of bribing judges for drug dealers. Milum even ended his posts with remarks clearly demonstrating that he was still bitter about not getting his refund. Banks sued Milum, saying that the comments were defamatory and false; and he won. Milum became the first blogger to lose a libel suit and was ordered to pay \$50,000 in damages (Parker 2006).

Another issue brought to light via a recent case refers to comments made about one's employer. In 2009, Dawnmarie Souza was fired from her place of work after making allegedly defamatory remarks about her employer on Facebook. Souza made the comments from her personal computer and on her own time; however, the company had a policy that prohibited employees from making "disparaging, discriminatory or defamatory comments" in reference to the company, superiors, co-workers or competitors. They claimed that Souza violated this policy. A U.S. labor court sided with Souza, who claimed that this was a violation of her right to free speech, and also said that the company's policies were too broad. The company agreed to review its policies and refrain from punishing employees for negative comments rather than take the case any further (Palabrica 2011). This case showed that employers cannot have an overreaching say in employees' social media activities, no matter the topic under discussion.

Another area of Internet defamation focuses on the increasing problem with "cyber-bullying," which is defined as "the use of modern communication to embarrass, humiliate, threaten, or intimidate an individual in the attempt to gain power and control over them" (Stutzky 2006). A New York judge decided last year that, in the case of Denise Finkel, cyber-bullying did not constitute defamation. Finkel sued her classmates in 2009 for creating a group on Facebook to mock her and posting comments stating that she was a drug user and had contracted AIDS, as well as comments referring to her as the devil. Finkel lost the case, as the judge did not think people would take the comments as statement of fact. Instead, the comments were considered hyperbole and opinion (Davis 2010). Cyber-bullying

cases may establish many legal precedents, but defamation has not been one of them.

The most common issue, however, is plain and simple defamatory remarks via a social media site. Attorney Richard C. Balough⁵ dealt with one of the first social media defamation cases when defending Amanda Bonnen last year. Bonnen had taken to Twitter to vent frustrations about her landlord, whom she was currently suing for the return of her security deposit. In her tweet, Bonnen claimed that she was living in a “moldy” apartment. The landlord, Horizon Group Management, LLC, sued Bonnen for defamation. The case was eventually dismissed after Balough motioned for it, claiming: the tweet was not specific in identifying Horizon; in its “social context,” the tweet constituted mere opinion and, therefore, did not qualify as libel under Illinois’ innocent construction rule⁶; the tweet did not contain verifiable facts; and the tweet lacked “precise meaning” (Balough 2010).

In a more high-profile case, however, it was made clear that defamatory remarks can get one into legal trouble. Fashion designer Dawn Simorangkir sued rock star Courtney Love for defamatory remarks made about the designer on Twitter, MySpace and Etsy, an e-commerce jewelry and fashion site, in 2009. Love, who had hired the designer to create dresses for her, took to social media to call Simorangkir a thief, a prostitute and a drug addict (Thomas 2011). In March of 2011, however, Love agreed to settle the case for \$430,000 plus interest before it

⁵ Richard C. Balough is Chicago-based attorney, specializing in communications and entertainment law. His firm took on one of the first social media libel cases last year, successfully motioning to dismiss the charges for the client.

⁶ Innocent Construction Rule: “A written or oral statement is to be considered in context, with the words and the implications therefrom given their natural and obvious meaning; if, as so construed, the statement may be reasonably innocently interpreted...it cannot be actionable *per se*.” – *Chapski v. Copley Press*, 1982 (Balough 2011).

went to jury (McCartney 2011). Simorangkir's lawyer, Bryan J. Freedman, points out the significance of this ruling, which could apply to other cases: "The fact is that this case shows that the forum upon which you communicate makes no difference in terms of potential legal exposure. Disparaging someone on Twitter does not excuse one from liability" (McCartney 2011).

Analysis

Based on the small amount of case law set forth pertaining to social media and libel, it seems that people need to start watching what they say. Balough says that people must understand that posting on social media sites is considered publishing, and libel laws don't distinguish among mediums. Wherever one types it, he or she can be sued for it. "It doesn't give people a free pass just because it's on social media," Balough says. It may seem like social media is a place for people to be themselves and say whatever they please, but Balough provides this warning: "Just because you're in front of a computer by yourself, and you type up something; that doesn't mean it's private... Unless you're comfortable with it appearing on the front page of The New York Times, don't type it." Especially with today's technology-soaked world, anything that goes on the Web can be traced for practically all of time (Balough 2011).

That being said, Balough admits that libel suits are rare. Unless you are suing a high-profile celebrity (as in the case of Courtney Love), libel cases are often not profitable. For most private persons, libel cases require a lot of digging on the part of the plaintiff (the victim of the defamation), according to Balough; and it is often

difficult to prove that the supposed libelous statements actually caused damage to someone's reputation. Much of the time, the best outcome is to simply get the person to stop posting the comments. "You can go through a lot of hoops and end up with not much at the end," Balough says. It is especially hard to obtain the desired outcome if the source of the defamation posts anonymously. If the poster does not use his or her real name, the plaintiff would have to acquire a subpoena against the ISP and try to track down the computer the comment was made from, hopefully linking that computer to an actual person (Balough 2011).

One of the biggest issues with this developing area of law is the line between pure opinion and potentially libelous statements, according to Balough. Libel law protects people from speech that is merely opinion-based or which constitutes hyperbole⁷ (Belmas and Overbeck 2011), which, as previously described, is often the case in social media libel suits. But with the incredible ease with which people can now express themselves, the law may need to redraw the line where opinion turns into defamation. People often tweet or otherwise post in a "stream of consciousness" manner, creating a challenge when distinguishing fact from opinion, Balough says. Although exact libel statutes vary from state to state, Balough sees some potential for change in legislation in the future to combat the issue of defamation via social media: "I think at some point the law is going to kind of catch up with social media. There may be some parameters [set]...I think what's going to happen is the courts are going to look more and more at this question of the context; and maybe they will expand what is opinion versus what is fact and give people who

⁷ An "extravagant exaggeration," as defined by Merriam-Webster online, 2011.

are posting or using social media a little bit more room to say things” (Balough 2011).

Libel law may begin to morph, but some don’t see a need to pursue this avenue. According to Stone, social media, specifically Twitter, has a self-policing quality.

“What happens more often than not is our belief that people are basically good and if you give them a tool to do more good they will do good things has been reaffirmed over and over again. And these types of [social media] systems tend to be self-policing. When something is true, it spreads far and wide. When something is false, it begins to spread; but then it gets fact checked; and there begins to be a backlash of truth against it; and it gets muted and put out like a fire.”

This may be true, but certain aspects of the system may need outside policing. King agrees with Balough, saying, “The law is slippery; the law is designed broken to be fixed in individual cases...Laws are general frameworks, but not specifically worded solutions...It’s very much like putting together a piece of furniture. You put the screws in a little bit, but you don’t tighten everything down until you are sure everything is in place. The pieces are ‘broken’” (King 2011). King believes that the essence of libel and slander laws will remain the same, but what could change are the smaller pieces, like the definition of a public and a private person, that aren’t tightened.

The issue of being a public or private person has been an important facet of libel law since its start. Based on the definition of a public person stated in a

previous section, one would assume that anyone with a social media account who is not a celebrity or government official of some sort would still be considered a private person. However, King offers a different perspective. King emphasizes Twitter's "democratizing" effect – it's ability to put everyone, celebrities and common folk alike, on equal footing (King 2010). Taking that a step further, King asserts that, if someone has put together a profile with his personal information and classified it as "public" so that anyone may see it, he could have just made himself a public person (King 2011). The idea may not be quite that simple, however. Balough does not deny that putting oneself into the public eye via social media could qualify that person as public. However, the person would have to be making a concerted effort to insert himself into public affairs: "[If] they're using [social media] to engage in a lot of public activity and public comment, they may be considered a limited public figure for that particular purpose" (Balough 2011). This, like many issues within social media libel law, will need to see its day in court to have a more definitive conclusion.

Overall, the future of social media and libel law is still a bit murky. Recent cases, like that of Courtney Love, have brought the issue to light and defined a few of the sub-categories within this area of law. However, more cases will need to be brought to the court before a clearer picture of defamation rules online can be painted. As of now, it seems that libel law may need some alterations to encompass social media and delineate what is allowed and what is not, what is considered opinion and what could be potentially libelous. Until these changes come about, people need to be aware that what they say on Facebook is up for scrutiny and

subject to the law. Statements made online are just as important as statements made in an interview with the local paper. People need to be responsible in what they post online and remember that their social networking accounts are, in fact, another form of media.

One thing that is clear to King, which has little to do with the legal aspect of social media but is an important consideration, is the way we teach people to decipher the loads of information that come their way each day. "When you let everybody into the playground, and everybody can play, and there's no rules on the playground, sometimes kids are going to go over and pee in the sandbox; and that kind of ruins it for everybody," King says. "When people begin to manipulate information with an agenda...suddenly we have a hard time grasping what's true and what's not true" (King 2011). This does not necessarily mean that there is an inherent flaw in the Internet or social media, however. The technological and media worlds are simply in a time of transition, which is affecting the way we approach information. "Teachers not only need to be the experts and teach a subject, but now they have to teach people how to determine what is true and what is not...If we don't have tools to parse through information, then truth is eroded, and truth is relative. That's the single biggest challenge" (King 2011).

Works Cited

- Alexander, Benjamin, and Gregory J. Sater. "Four Legal Issues Stare Down Social Marketing Planners." *Response magazine* Feb. 2011: 55.
- Baker, Stephen. "Flickr as a social network." *Bloomberg Businessweek* 24 April 2009. Web. 17 April 2011.
- Balough, Richard C. Personal interview. 22 April 2011.
- Balough, Richard C. "Memorandum of Law in Support of 2-615 Motion to Dismiss." 9 Nov. 2010.
- Belmas, Genelle, and Wayne Overbeck. *Major Principles of Media Law 2011 Edition*. Boston: Wadsworth Cenage Learning, 2011. Print.
- Boyd, Danah M., and Nicole B. Ellison. "Social Network Sites: Definition, History, and Scholarship." *Journal of Computer-Mediated Communications* 13 (2007). Web. 2 April 2011.
- Carlson, Nicholas. "At Last – The Full Story of How Facebook Was Founded." *Business Insider* 5 March 2010. Web. 17 April 2011.
- Chellam, Raju. "World becoming digitally connected; 2b people have Internet access, 5.3b use cellphones." *The Business Times Singapore* 10 Jan. 2011.
- Crovitz, Gordon. "Revolution by Social Media." *The Wall Street Journal* 14 Feb. 2011. Web. 1 May 2011.
- Davis, Wendy. "Judge Dismisses Defamation Charge in Teens' 'Cyberbullying' Case." *MediaPost* 26 July 2010. Web. 24 April 2011.

Degner, Marley, and Cydney Tune. "Blogging and Social Networking: Current Legal Issues." *The Computer & Internet Lawyer* 26 (2009): 1-9. Web. 21 March 2011.

Drezner, Daniel W., and Henry Farrell. "The Power and Politics of Blogs." Aug 2004. Web. 17 April 2011.

Facebook. "Statistics." *Facebook Press Room*. 2011.

Federal Communications Commission. "Program Specific Recovery Act Plan for the FCC's Efforts on the Broadband Technology Opportunities Program." *Federal Communications Commission*. 1 June 2010. Web. 24 April 2011.

Gertz v. Welch. 418 U.S. 323. U.S. Sup. Ct. 1974.

International Telecommunications Union (ITU). "The Birth of Broadband: Frequently Asked Questions." *International Telecommunications Union* Sept. 2003. Web. 17 April 2011.

Haenlein, Michael, and Andreas M. Kaplan. "Users of the world, unite! The challenges and opportunities of social media." *Business Horizons* 53 (2010): 59-68.

Kindelan, Katie. "The History of Social Media." *Social Times* 28 Jan. 2011. Web. 10 April 2011.

King, Brad. Personal interview. 8 Sept. 2010.

King, Brad. Personal interview. 24 March 2011.

LinkedIn. "About Us." *LinkedIn Press Center*. 2011. Web. 14 April 2011.

LiveJournal. "Statistics." *LiveJournal*. 2011. Web. 14 April 2011.

McCartney, Anthony. "\$430K Love settlement shows tweets can be costly." *The Associated Press* 5 March 2011.

MySpace. "Fact Sheet." *MySpace*. 2011. Web. 14 April 2011.

New York Times Co. v. Sullivan. 376 U.S. 254. U.S. Sup. Ct. 1964.

Parker, Laura. "Courts are asked to crack down on bloggers, websites; Those attacked online are filing libel lawsuits." *USA Today* 2 Oct. 2006. Web. 17 April 2011.

Palabrica, Raul J. "Social networking hazard." *Philippine Daily Inquirer* 18 Feb. 2011. Web. 14 March 2011.

Qualman, Eric. *Socialnomics: How Social Media Transforms the Way We Live and Do Business*. Hoboken, NJ: John Wiley & Sons, Inc., 2009.

Stone, Biz. Question & Answer Session. Ball State University. 17 Sept. 2010.

Stratton Oakmont, Inc. and Daniel Porush v. Prodigy Services Company. No. 31063/94. Sup. Ct. of New York, Nassau County. 24 May 1995.

Stutky, Glenn. "Cyber Bullying Information." Michigan State University. March 2006. Web. 20 April 2011.

Thomas, Megan. "Civil trial over Courtney Love's tweets about designer is postponed." *CNN* 26 Jan. 2011. Web. 27 March 2011.

Tran, Calvin. "New Social Media Site, Reel Playmakers, Makes Recruiting High School Football Stars Easy." *PRNewswire* 23 April 2011. Web. 14 April 2011.

"United States." *Press Reference*. 2011. Web. 14 April 2011.

Wordpress. "Stats." *Wordpress*. 2011. Web. 14 April 2011.

Wyatt, Edward. "A Plan With a History." *The New York Times* 21 April 2011. Web. 24 April 2011.

YouTube. "Frequently Asked Questions." *YouTube Press Room*. 2011. Web. 14 April 2011.

YouTube. "Statistics." *YouTube Press Room*. 2011. Web. 14 April 2011.